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Opinion No. 12-28

Contracts for unmanned traffic enforcement cameras

QUESTION

Is Senate Bill 2779/House Bill 2993 of the 107th General Assembly of Tennessee (hereinafter "SB2779") defensible against a challenge that it unconstitutionally impairs the obligations of contracts?

OPINION

SB2779 requires that any contract involving unmanned traffic enforcement cameras shall provide that the contract must conform to any changes in state law. SB2779 does not itself substantially adjust the rights and responsibilities of parties to existing contracts in an unconstitutional manner. SB2779, however, should not be construed to require a party to be bound by a change in state law that is itself unconstitutional.

ANALYSIS

SB2779 proposes to amend Tenn. Code Ann. § 55-8-198 by adding the following subsection:

> A local government shall include in any contract involving unmanned traffic enforcement cameras that the contract must conform to any changes in state law. New and existing contracts, as well as contract renewals occurring after the effective date of this act, shall contain a provision that the contract shall comply with all applicable revisions of state law.

S.B. 2779, 107th General Assembly, 2nd Sess. § 1 (Tenn. 2012). The law would take effect on July 1, 2012. Id. § 2.

The Tennessee Constitution and the Constitution of the United States both prohibit laws that impair the obligation of a contract. U.S. Const., art. I, § 10, cl. 1; Tenn. Const., art. I, § 20. These provisions are generally referred to as the "Contract Clause." Contract Clause analysis follows a three-part inquiry. As a threshold matter, the state law in question must, in fact, operate as a substantial impairment of a contractual relationship. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983). If it does, the State, in justification, must have a significant and legitimate public purpose behind the regulation. Id. Once a legitimate

public purpose has been identified, the third inquiry is whether the adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. *Id.* at 412. Thus the Contract Clause does not prohibit the States from generally repealing or amending statutes, or even from enacting legislation with retroactive effects. *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1997). The Contract Clause also applies only to laws with retrospective, not prospective, effect. *Local Div. 589*, *Amalgamated Transit Union v. Massachusetts,* 666 F.2d 618, 637 (1st Cir. 1981) (citing *Ogden v. Saunders*, 6 L. Ed. 606 (1827)).

This Office previously concluded that a law that placed new restrictions on how unmanned traffic enforcement cameras could be used as evidence to support the issuance of a traffic citation was unlikely to be held to operate as a substantial impairment of contractual relationships between local governments and vendors of camera systems. Op. Tenn. Att'y Gen. 11-61, at 3 (Aug. 8, 2011). This determination was based, in part, on the fact that the operation of motor vehicles is subject to pervasive regulation by the State. *Id.* Because the parties are deemed to enter their obligations in contemplation of that regulatory authority, their legitimate contractual expectations were unlikely to be defeated by alterations to the rules of traffic enforcement. *Id.*

In general, a statute that merely confirms what the parties are already deemed to know—that they enter into contractual obligations subject to the State's legitimate exercise of its police powers—is unlikely to pose a constitutional problem. *See, e.g., Hudson Water Co. v. McCarter*, 209 U.S. 349, 357 (1908) (stating that "[o]ne whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them."). SB2779, on its face, does not appear to adjust the rights and responsibilities of contracting parties in a substantial fashion. Although SB2779 requires alteration of existing contracts, that alteration—the inclusion of a provision "that the contract shall comply with all applicable revisions of state law"—does not of its own force extinguish any contractual right or "create a new obligation, impose a new duty or attach a new disability." *Estate of Bell v. Shelby County Health Care Corp.*, 318 S.W.3d 823, 829 (Tenn. 2010). We note, however, that SB2779 is not specific as to the character of "changes in state law" that might transpire in the future. Given it is possible some changes to Tennessee law could amount to a retroactive substantial impairment of a contractual relationship running afoul of the Contract Clause, SB2779 would not cure any such constitutional defect. In other words, SB2779 cannot require a party to be bound by a statute that is otherwise constitutionally infirm.

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